

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case Nos.: 09-O-17571-LMA (10-O-01017)
)	
LERUE J. GRIM,)	DECISION AND ORDER
)	OF INVOLUNTARY INACTIVE
Member No. 37485,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this disciplinary proceeding, respondent LeRue J. Grim is charged with multiple acts of misconduct in two client matters. The charged misconduct includes: (1) failure to perform services competently; (2) failure to obey court orders; (3) failure to report sanctions; (4) failure to communicate with client; (5) failure to return client file; and (6) failure to promptly return unearned fees of \$7,300 to an incarcerated client.

This court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. Based upon the serious nature and extent of culpability and the applicable mitigating and aggravating circumstances, particularly his three prior records of discipline, the court recommends that respondent be disbarred from the practice of law.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on August 12, 2011. Respondent filed a response.

A two-day hearing was held on December 13 and 15, 2011. Deputy Trial Counsel Christine Souhrada represented the State Bar. Respondent represented himself. On January 4, 2012, following the filing of closing statements, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 11, 1966, and has been a member of the State Bar of California at all times since that date.

The court finds respondent's testimony to be not credible when he claimed that he did not know about the 2007 and 2008 court-ordered sanctions, that he had visited his incarcerated client William Hackney in 2008, and that he had communicated with Hackney through Hackney's wife.

Case No. 09-O-17571 – Gin Matter

Facts

On June 8, 2007, respondent filed on behalf of his client, Mark Gin dba Cody Edge, a civil complaint alleging a business tort against Dean McKay, H. Dean McKay, and H. Dean McKay & Associates in San Francisco County Superior Court, case No. CGC-07-464100 ("Gin matter"). The proof of service on defendants was due no later than August 7, 2007.

Respondent did not file any proof of service on any defendant by the due date.

On August 29, 2007, the court set an order to show cause ("OSC") hearing for October 2, 2007, for respondent's failure to file proof of service on defendants. The Notice to Show Cause (NSC) was sent to respondent's official membership records address.

Respondent did not appear at the scheduled OSC hearing. On October 2, 2007, the court ordered sanctions in the amount of \$200 against respondent for failure to appear at the OSC hearing. The sanctions were ordered payable no later than October 17, 2007. Notice was sent by the court to respondent's official membership records address.

Respondent did not pay the \$200 sanctions by October 17, 2007.

On November 1, 2007, the court set a second OSC hearing for respondent's failure to file proof of service on defendant(s) and obtain answer(s), or enter default(s) for December 24, 2007. The NSC was sent to respondent's official membership records address.

On December 24, 2007, respondent again did not appear at the scheduled OSC hearing. The court continued the OSC hearing to February 25, 2008. The NSC was sent to respondent's official membership records address.

On December 24, 2007, the court ordered sanctions in the amount of \$350 against respondent for failure to appear at the OSC hearing on December 24, 2007. The sanctions were ordered payable no later than January 8, 2008. Notice was sent by the court to respondent's official membership records address.

Respondent did not pay the \$350 sanctions by January 8, 2008.

On February 25, 2008, respondent did not appear at the scheduled OSC hearing. The court continued the OSC hearing for respondent's failure to file proof of service on defendant(s) and obtain answer(s), or enter default(s) to June 23, 2008. The NSC was sent to respondent's official membership records address.

On February 25, 2008, the court again ordered sanctions in the amount of \$350 against respondent for failure to appear at the OSC hearing on February 25, 2008. The sanctions were ordered payable no later than March 11, 2008. Notice was sent by the court to respondent's official membership records address.

Respondent did not pay the \$350 sanctions by March 11, 2008.

On June 23, 2008, respondent again did not appear at the scheduled OSC hearing. The court continued the OSC hearing for respondent's failure to file proof of service on defendant(s) and obtain answer(s), or enter default(s) to October 27, 2008. The NSC was sent to respondent's official membership records address.

On June 23, 2008, the court ordered sanctions in the amount of \$500 against respondent for failure to appear at the OSC hearing on June 23, 2008. The sanctions were ordered payable no later than July 8, 2008. Notice was sent by the court to respondent's official membership records address.

Respondent did not pay the \$500 sanctions by July 8, 2008.

On October 27, 2008, respondent did not appear at the scheduled OSC hearing. The court continued the OSC hearing for respondent's failure to file proof of service on defendants and obtain answers, or enter defaults to January 26, 2009. The NSC was sent to respondent's official membership records address.

On October 27, 2008, the court ordered sanctions in the amount of \$750 against respondent for failure to appear at the OSC hearing on October 27, 2008. The sanctions were ordered payable no later than November 12, 2008. Notice was sent by the court to respondent's official membership records address.

Respondent again did not pay the \$750 sanctions by November 12, 2008.

Finally, on January 22, 2009, respondent filed the proof of service with the court which indicated that defendant Dean McKay, an individual, had been personally served on January 13, 2009.

On January 22, 2009, respondent filed a declaration in response to OSC for relief from sanctions and a continuance to enable plaintiff's counsel to personally appear in court to argue plaintiff's motion. Respondent asked for relief from the sanctions which had been imposed on him.

On January 23, 2009, the OSC hearing for failure to obtain an answer(s) from, or enter default(s) against defendant(s) set for January 26, 2009, was continued to April 27, 2009. Notice was sent by the court to respondent's official membership records address.

On April 23, 2009, the OSC hearing for respondent's failure to pay outstanding sanctions set for April 27, 2009, was continued to June 29, 2009. Notice was sent by the court to respondent's official membership records address. The April 23, 2009 order continuing the OSC was returned to the court as "insufficient address" and was not delivered by the post office.

On June 16, 2009, the OSC hearing for respondent's failure to pay outstanding sanctions set for June 29, 2009, was continued to August 10, 2009. Notice was sent by the court to respondent's official membership records address.

On July 28, 2009, the OSC hearing for respondent's failure to pay outstanding sanctions set for August 10, 2009, was continued to September 21, 2009. Notice was sent by the court to respondent's official membership records address. The July 28, 2009 order continuing the OSC was returned to the court as "insufficient address" and was not delivered by the post office.

On or about September 21, 2009, respondent did not appear at the scheduled OSC hearing. However, there was no clear and convincing evidence that respondent had notice of the September 21, 2009 OSC hearing. The court set a short cause trial for December 21, 2009.

On September 21, 2009, the court ordered sanctions in the amount of \$1,000 against respondent for failure to appear at the OSC hearing on September 21, 2009. The sanctions were ordered payable no later than October 6, 2009. Notice was sent by the court to respondent's official membership records address.

Respondent did not pay the \$1,000 sanctions by October 6, 2009.

On December 22, 2009, the court continued the short cause trial to December 28, 2009, for a hearing on proof of filing mutual dismissals.

On December 28, 2009, dismissal of the entire action of all parties and causes of action with prejudice was filed with the court.

On May 5, 2010, sanction payment of \$1,000 was paid.

In summary, respondent had knowledge of the imposition of judicial sanctions for his failure to appear at OSC hearings in violation of the following six court orders in the Gin matter:

<i>Date of Court Order</i>	<i>Amount of Sanctions</i>
October 2, 2007	\$ 200
December 24, 2007	\$ 350
February 25, 2008	\$ 350
June 23, 2008	\$ 500
October 27, 2008	\$ 750
September 21, 2009	\$1,000

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

By not timely serving the defendants and filing a proof of service with the court by August 7, 2007, by not prosecuting the Gin matter for two years, by not appearing at the October

2, 2007, December 24, 2007, February 25, 2008, June 23, 2008, and October 27, 2008² OSC hearings, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count Two - (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

The court had sanctioned respondent on six separate occasions between October 2007 and September 2009. Although he was aware of these sanctions, as evidenced by his January 2009 declaration in response to OSC for relief from sanctions and by his answer to the NDC, respondent did not timely pay the six court-ordered sanctions. For example, he paid the September 2009 sanctions of \$1,000 on May 5, 2010, some seven months after the due date of October 6, 2009.

Therefore, by failing to obey the court orders of October 2, 2007, December 24, 2007, February 25, 2008, June 23, 2008, October 27, 2008, and September 21, 2009, and by failing to pay the six court-ordered sanctions by the due dates, respondent willfully violated section 6103.

Count Three - (§ 6068, subd. (o)(3) [Failure to Report Sanctions])

² There was no clear and convincing evidence that respondent had notice of the September 21, 2009 OSC hearing.

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000 or more which are not imposed for failure to make discovery.

Respondent admitted that he did not report the sanctions; he claimed that he mistakenly believed the court was supposed to report the sanctions to the State Bar. Thus, respondent willfully violated section 6068, subdivision (o)(3), by failing to inform the State Bar about the \$1,000 sanctions imposed on him in September 2009.

Case No. 10-O-01017 – Hackney Matter

Facts

In February 2007, William Hackney ("Hackney") hired respondent to represent him in the underlying criminal matter entitled *People of the State of California v. William Hackney*, Alameda County Superior Court, case No. C 149565; *People v. Hackney*, Court of Appeal, First Appellate District, Div. 3 - case No. A113420.

On February 2, 2007, Hackney paid respondent \$1,500 in advanced fees.

On March 20, 2007, respondent met with Hackney to discuss his matter at the California prison where Hackney was and is still currently incarcerated.

On March 20, 2007, Hackney sent a letter to respondent regarding issues for the appeal.

On August 20, 2007, Hackney sent respondent a letter and informed respondent that the California Supreme Court denied his petition for review and advised respondent of the filing deadlines for:

- Petition for Certiorari to the United States Supreme Court due by September 15, 2007; and

- Petition for Writ of Habeas Corpus to the United States District Court, Northern District, due by September 14, 2008.

On February 14, 2008, Hackney sent a letter to respondent requesting an update on the status of his appeal.

On March 22, 2008, Hackney's wife, Barbara Thornton, on behalf of Hackney, sent a letter to respondent requesting an update on the status of Hackney's appeal and for respondent to contact Hackney directly.

By April 21, 2008, respondent had received a total of \$7,300 in advance fees for the Hackney matter.

Hackney sent 11 additional letters to respondent requesting an update on the status of his appeal on April 25, May 6, May, June 24, July 22, October 5, and November 1, 2008, and on January 20, March 17, June 1, and August 16, 2009.

On September 1, 2009, Hackney sent a letter to respondent terminating respondent's services and demanded a return of all advanced fees paid to respondent. Hackney requested that the fees be sent to his wife, Barbara Thornton.

On September 11, 2009, respondent visited Hackney in prison. After the visit, Hackney sent a letter to respondent again terminating respondent's services and demanding a return of the \$7,300. Hackney again requested that the fees be sent to his wife.

On October 1, 2009, Hackney sent a third letter to respondent demanding a return of the \$7,300. Hackney again requested that the fees be sent to his wife.

On January 19, 2011, Thornton, on behalf of Hackney, sent a letter to respondent at his official membership records address, demanding a return of Hackney's \$7,300 in advance fees paid to respondent and demanded the return of Hackney's client file.

Respondent received all of the letters from Hackney and Thornton soon after they were sent from March 2007 through January 2011, but did not respond to any of them.

Respondent finally paid \$7,300 to Hackney in September 2011, two years after the client's demand and a month after the filing of the NDC.

Conclusions

Count Four - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Other than meeting with Hackney in prison in September 2009, respondent failed to perform any services on behalf of Hackney in willful violation of rule 3-110(A).

Count Five - (§ 6068, subd. (m) [Failure to Respond to Client Inquiries])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

The court does not find respondent to be credible that he visited Hackney in prison in 2008 or that he was communicating with Hackney through his wife. Therefore, by failing to respond to Hackney's letters regarding the status of his case from March 2007 through September 2009, respondent willfully violated section 6068, subdivision (m).

Count Six - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

Respondent willfully violated rule 3-700(D)(1) by failing to return the client file to Hackney when Thornton asked for it on behalf of Hackney on January 19, 2011.

Count Seven - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent willfully violated rule 3-700(D)(2) by failing to promptly refund any of the \$7,300 advanced fees paid by Hackney. Hackney demanded the refund in September 2009 and respondent did not pay until two years later in September 2011 and after the NDC was filed.

Aggravation³

Prior Record of Discipline (Std. 1.2(b)(i))

Respondent has three prior records of discipline. On January 21, 1983, respondent was privately reprimanded for failing to perform legal services competently, failing to communicate with clients, and other professional misconduct in two client matters. (State Bar Court case No. 81-O-00202.)

In his second discipline case, by order filed December 30, 1997, respondent was suspended for two years, execution stayed, and he was placed on probation for two years on conditions, including four months' actual suspension. The misconduct involved four client matters and included failing to perform legal services competently, failing to maintain respect for courts, failing to communicate with clients, and improperly withdrawing from employment. There, the court found that he blamed his clients for their problems with their cases and in communicating with him, calling them emotionally unstable, dysfunctional and angry and liars. The court further noted that the persistent pattern was of miscommunication or no

³ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

communication and that the responsibility must lie with respondent. (Supreme Court case No. S065023; State Bar Court case Nos. 92-O-20614; 94-O-16384.)

In his third discipline case, by order filed July 1, 1997, respondent was suspended for three years, execution stayed, and he was placed on probation for three years on conditions, including 30 months' actual suspension and until he had shown proof of rehabilitation. His misconduct involved two client matters and included failing to perform legal services competently, failing to provide proper accounting, failing to avoid the representation of adverse interests, failing to avoid adverse interests in a business transaction with a client, failing to promptly refund unearned fees, misrepresenting to clients and to the court and filing false pleadings. There, the court did not consider his second discipline case to be an aggravating factor because the notice was filed after the occurrence of the misconduct in this third discipline case. The court was deeply troubled by respondent's absolute blindness to conflicts of interest and professional ethics. For example, respondent, age 63 at the time, had a sexual relationship with his incarcerated client's spouse, who was 20, before, during and after the client's trial. Yet, he denied it, claiming the relationship was without his consent. (Supreme Court case No. S060817; State Bar Court case Nos. 94-O-17544; 94-O-19001.)

Respondent's prior misconduct is remarkably similar to his behavior in this case in that he took an incarcerated client's fees and then abandoned the client. "Respondent's past and present misconduct show a disturbing willingness to employ deceitful means to accomplish his objectives." (See *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 177.)

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii))

Respondent's multiple acts of misconduct are an aggravating factor. He failed to perform services competently, failed to obey court orders, failed to report sanctions, failed to communicate with client, failed to return client file, and failed to promptly return unearned fees.

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv))

Respondent's repeated failures to appear in court in the Gin matter which resulted in multiple sanctions caused undue burden to the client and the administration of justice. And because of his failure to perform services competently and his failure to promptly return unearned fees in the Hackney matter, the incarcerated client was deprived of the funds for more than two years. Respondent's misconduct effectively prevented Hackney from seeking other counsel. (See *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, 465.)

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v))

Respondent demonstrated lack of insight into his wrongdoing. Not only did he fail to see the seriousness of his misconduct, but he also blamed others for his ethical and professional relapses, including clients, clients' family and friends, and the State Bar. He continued to assert, despite overwhelming evidence to the contrary, that he did not commit any acts of misconduct. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Mitigation

Good Character (Std. 1.2(e)(vi))

Respondent presented three character witnesses – two of whom were his former clients and one was an attorney. Although they testified to his honesty, competence and dedication, none of them were aware of the full extent of his misconduct. Therefore, the evidence is entitled

to only limited weight in mitigation. (See *In the Matter of Kritenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469.)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 1.6, 1.7, 2.4, 2.6, and 2.10 apply in this matter.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides, in pertinent part, that when two or more acts of misconduct are found in a single disciplinary proceeding, and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(b) provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

Standard 2.4(b) provides that a member's culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a member's culpability of willfully failing to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that violation of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim, with due regard for the purposes of discipline.

Finally, standard 2.10 provides that violations of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the gravity of the misconduct or harm to the victim, with due regard to the purposes of imposing discipline.

Respondent argues that a dismissal or a short period of actual suspension would be appropriate. In the Gin matter, he maintained that he may have been the attorney of record but he and the client had agreed that his client "would do all the work on the case." Therefore, any lack of due diligence was not his fault. In the Hackney criminal matter, respondent claimed that it took him more than two and a half years to evaluate the case and that when Hackney terminated his services, he "had not yet taken the case," even though he was paid \$7,300. The court finds respondent's contentions without merit.

The State Bar urges disbarment. The court agrees.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) Apparently, respondent's three prior impositions of discipline had very little impact

on his behavior and demonstrated his inability to conform his conduct to ethical norms. In particular, respondent's abandonment of an incarcerated client is a serious matter warranting substantial discipline. (*Borré v. State Bar* (1991) 52 Cal.3d 1047, 1053.) “Especially aggravating was respondent's continued holding of [the client’s] ... advanced fees long after he failed to perform any proven amount of legal services.” (*In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, 465.)

The court recognizes that respondent, after 46 years of practice, plans to retire soon. Nevertheless, based on the severity of the offense, the serious aggravating circumstances, above all, his three prior records of discipline, and the lack of any compelling mitigating factors, the court must recommend disbarment under standard 1.7(b).

Recommendations

It is recommended that respondent **LeRue J. Grim**, State Bar Number **37485**, be disbarred from the practice of law in California and respondent’s name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that respondent comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: March _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court